



July 14, 2000

Mr. Jeffrey A. Morrison
Bush & Morrison, P. C.
4025 Woodland Park Blvd., Suite 190
Arlington, Texas 76013

OR2000-2659

Dear Mr. Morrison:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138014.

The Arlington Classics Academy (the “academy”), which you represent, received a request for numerous documents including the academy’s budget, employment contracts, complaints regarding the employment of teachers and a list of teachers whose contracts were not renewed. Because you have only requested a decision concerning request items 7, 8, and 9, we assume that you have released the remaining responsive information to the requestor. You claim that teacher evaluations are excepted from disclosure under section 21.355 of the Education Code. Further, you assert that the academy does not have lists responsive to request items 7 and 9. We have considered the exception you claim and reviewed the submitted information.

First, you assert that the academy does not have a prepared list responsive to request items 7 and 9. In request item 7, the requestor asks for a list of the name and hire date for each and every employee hired during the 1999-2000 school year and the termination date for each, if applicable. In request item 9, the requestor asks for a list of each and every teacher whose contract was not renewed for the 2000-2001 school year. Chapter 552 of the Government Code does not require a governmental body to prepare information in a form requested by a member of the public. Open Records Decision No. 467 (1987). However, a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 at 8 (1990). Further, the fact that it may be burdensome to provide the information does not relieve a governmental body of its responsibility to comply with the Public Information Act. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (1976), *cert. denied*, 430 U.S. 931 (1977) (cost or difficulty in complying with act does not determine availability of information), Open Records Decision No. 497 (1988). If the academy holds information from which the requested information can be obtained, the academy office must provide that information to

the requestor unless it is otherwise excepted from disclosure. With regard to request item 7, section 552.022(a)(2) of the Government Code provides that the name and dates of employment of an employee of a governmental body are public information. Thus, the academy must release information responsive to request item 7.

Pursuant to section 552.301(e)(1), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D). However, the academy has failed to submit a copy of the specific information requested or representative samples with regard to request item 8 within the fifteen business day period mandated by section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301(e) results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You argue that teacher evaluations responsive to request item 8 are excepted from disclosure under section 21.355 of the Education Code. However, you have not submitted the information, so we have no basis for finding it confidential. Thus, we have no choice but to order the information released per section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

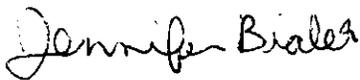
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/ljp

Ref: ID# 138014

cc: Ms. Jamie Jordan
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(w/o enclosures)